

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MARY E. BARBOUR AS TRUSTEE
FOR THE MARY E. BARBOUR
FAMILY TRUST ONE, Derivatively
On Behalf of BROCADE
COMMUNICATIONS SYSTEMS,
INC.,

Plaintiff,

vs.

GREGORY L. REYES, DAVID L.
HOUSE, MICHAEL KLAYKO,
RICHARD DERANLEAU, KUMAR
MALAVALLI ANTONIO CANOVA,
MICHAEL J. BYRD, STEPHANIE
JENSEN, NEIL DEMPSEY, SANJAY
VASWANI, L. WILLIAM KRAUSE,
ROBERT R. WALKER, GLENN C.
JONES, MICHAEL J. ROSE, SETH D.
NEIMAN, NICHOLAS G. MOORE,
CHRISTOPHER B. PAISLEY,
WILLIAM K. O'BRIEN, LARRY
SONSINI, MARK LESLIE, TYLER
WALL, RENATO A. DIPENTIMA,
JOHN W. GERDELMAN, KPMG,
LLP, WILSON SONSINI GOODRICH
& ROSATI, P.C. AND DOES 1-25,
inclusive,

Defendants,

Case No. C 08-02029 CRB

PLAINTIFF MARY E.
BARBOUR'S [PROPOSED]
ORDER SETTING SCHEDULE
FOR SPECIAL LITIGATION
COMMITTEE

Dept.: 8

1 and
2 BROCADE COMMUNICATIONS
3 SYSTEMS, INC., a Delaware
4 corporation,
5 Nominal Defendant.

6 WHEREAS, on June 12, 2008 the Court held a Case Management
7 Conference in the above-captioned matter;

8 WHEREAS, the Court heard argument from counsel for Plaintiff and counsel
9 for Brocade's Special Litigation Committee as to how the action should proceed
10 over the next few months;

11 WHEREAS, counsel for the SLC advised the Court that the SLC has reached
12 a conclusion to pursue various claims against 11 prospective defendants relating to
13 the backdating of stock options at Brocade;

14 WHEREAS, counsel for the SLC advised the Court that letters would be
15 mailed to the 11 defendants on June 13, 2008 advising the defendants that the SLC
16 had authorized claims to be pursued against such individuals, identifying the
17 claims, and providing the defendants until June 27, 2008 to provide a response, if
18 any, to the SLC;

19 WHEREAS, the SLC will finalize its Resolution and report by July 11, 2008,
20 after receiving responses (if any) from the 11 defendants;

21 WHEREAS, the SLC has indicated its intent to meet with Plaintiff's counsel
22 to discuss the prosecution of the claims and Plaintiff's counsel's role in the
23 prosecution of such claims, should the parties be able to reach an agreement;

24 WHEREAS, the Court has been informed that, on June 13, 2008, the SLC's
25 counsel sent letters to the prospective defendants advising them that the SLC has
26 decided to assert claims against them on behalf of Brocade and that the prospective
27 defendants could make any written submissions by June 27, 2008;

1 THEREFORE, IT IS ORDERED AS FOLLOWS:

- 2 1. The Special Litigation Committee (“SLC”) shall finalize its conclusions,
3 Resolution, and report by July 11, 2008. A copy of the Resolution and
4 report shall be provided to the Court and Plaintiff’s counsel the same day.
5 2. Plaintiff may file any motion she wishes, including any motions relating
6 to advancement, indemnification, or repayment of legal fees by the
7 individual defendants, but no hearing on such motions shall occur prior to
8 mid-August 2008. The parties shall work cooperatively together to
9 schedule a mutually convenient briefing schedule and hearing date.
10 3. Discovery is stayed until further notice.
11 4. A further Status Conference is set for July 18, 2008. At the conference, if
12 Plaintiff’s counsel and counsel for the SLC have not reached a mutually
13 agreeable resolution regarding prosecution of claims, and if Plaintiff
14 desires to challenge the independence, good faith, or conclusions reached
15 by the SLC, the Court will entertain argument from counsel about
16 scheduling matters and discovery pertaining to any such challenge.

17 IT IS SO ORDERED.

18
19 Dated:

20 THE HON. CHARLES R. BREYER
21 UNITED STATES DISTRICT JUDGE
22
23
24
25
26
27
28